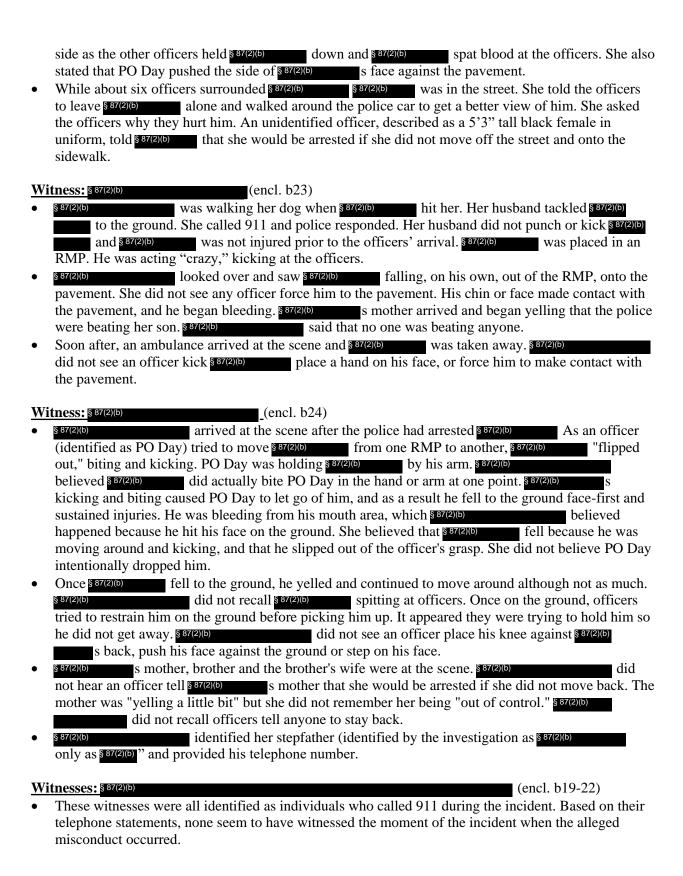
CCRB INVESTIGATIVE RECOMMENDATION

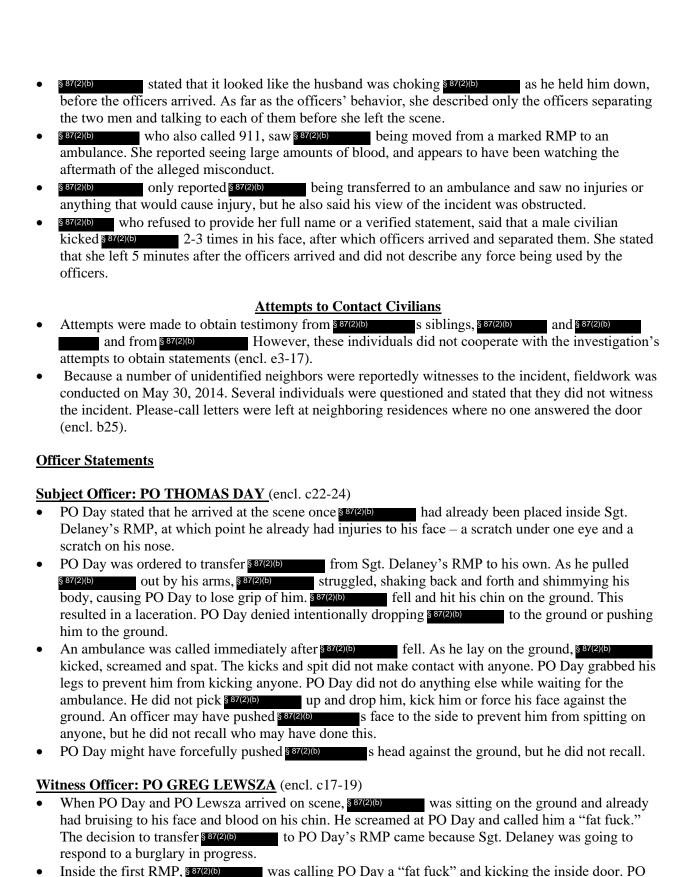
Investigator:		Team:	CCRB Case #:	Ø	Force		Discourt.	U.S.
Ben Gilmore		Team # 4	201403897		Abuse		O.L.	Injury
Incident Date(s)		Location of Incident:		P	Precinct:	18	Mo. SOL	EO SOL
Sunday, 04/13/2014 11:19 PM		60th Avenue and 69th	Place		104	10	/13/2015	10/13/2015
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CCF	RB
Mon, 04/14/2014 2:40 PM		IAB	Phone		Wed, 04/23	3/201	4 4:00 PM	
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Thomas Day	04758	940056	HARBOR					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Greg Lewsza	00761	949204	104 PCT					
2. SGT Daniel Delaney	02297	945653	104 PCT					
3. POM Michael Oswald	08354	949431	104 PCT					
Officer(s)	Allegatio	on			Inve	stiga	tor Recon	nmendation
A.POM Thomas Day	Force: PO Thomas Day used physical force against (8) 87(2)							

This complaint was reported to IAB on April 14, 2014 (encl. b1-2). At approximately 11:19 p.m. on April 13, 2014, \$\frac{87(2)(b)}{2}\$ was walking in the vicinity of 60 th Avenue and 69 th Place in Queens. He was intoxicated and assaulted a woman, identified by the investigation as \$\frac{87(2)(b)}{2}\$ After a physical encounter with \$\frac{87(2)(b)}{2}\$ s husband (identified by the investigation as \$\frac{87(2)(b)}{2}\$ mother, \$\frac{87(2)(b)}{2}\$ and brother, \$\frac{87(2)(b)}{2}\$ was arrested and placed inside a marked RMP assigned to Sgt. Danied Delaney and PO Michael Oswald. PO Thomas Day then took \$\frac{87(2)(b)}{2}\$ out of the RMP while handcuffed and allegedly dropped him on the ground. PO Day then allegedly placed his foot on \$\frac{87(2)(b)}{2}\$ s head and applied pressure (Allegation A).
Mediation, Civil and Criminal Histories This case was not eligible for mediation. [8 87(2)(0)] [88 85(1)(3)8(4)] [8 87(2)(0)] (encl. e1-2). A request to the New York City Comptroller's Office for any Notice of Claim filed in regar to this incident was submitted on December 16, 2014. The results are pending and will be included in the case file upon receipt.
Civilian and Officer CCRB Histories PO Day has been a member of the NYPD for 8 years and has been the subject of 9 allegations, none of which were substantiated (encl. a1) § 87(2)(b) (encl. a2).
<u>Civilian Statements</u>
Victim: \$87(2)(b)
• \$87(2)(b) was treated at \$87(2)(b) and received stitches under his chin. He stated that he received a fracture to the left side of his skull and fluid from his brain exited his ear. Aside from the laceration under his chin, he did not know how the injuries were sustained.
Complainant/Witness: \$87(2)(b) • \$87(2)(b)
Victim: \$87(2)(b)(encl. b13-18) • \$87(2)(b) did not believe that \$87(2)(b) resisted or moved his body as PO Day took him out of the RMP. \$87(2)(b) s feet were caught in the seat as he was pulled out. She did not allege that PO Day placed his foot on \$87(2)(b) s head, but did claim that PO Day kicked \$87(2)(b) on his

Page 2 CCRB Case # 201403897



Page 3
CCRB Case # 201403897



Page 4 CCRB Case # 201403897

Lewsza stood behind PO Day as he tried to pull \$87(2)(b) out of the RMP by his shoulders but

•	hooked his feet inside the car and bit PO Day's arm, causing PO Day to pull his arm away. This in turn caused \$87(2)(b) to fall down and hit his head against the pavement. \$87(2)(b) kicked and spat at officers while on the ground waiting for an ambulance. PO Lewsza held his legs while PO Day and PO Oswald held his arms. Sgt. Delaney occasionally approached to help hold \$87(2)(b) down. PO Lewsza did not see any officer do anything to prevent \$87(2)(b) from spitting, because his attention was on \$87(2)(b) s feet and legs. He did not see any officer put their hand on \$87(2)(b) s face.					
Wi	tness Officer: SGT. DANIEL DELANEY (encl. c37-39)					
•	Sgt. Delaney and PO Oswald were the first officers to arrive on scene. \$87(2)(b) and \$87(2)(b) (whom Sgt. Delaney called '\$87(2)(b) ") were on their feet, grappling with each other. Sgt. Delaney and PO Oswald separated them, and \$87(2)(b) was placed under arrest. \$87(2)(b) had abrasions to his face. He yelled obscenities and was placed into an RMP without incident.					
•	prevented PO Day from taking him out of the RMP by moving his torso and hooking his feet, and he fell to the ground on his face. PO Day told Sgt. Delaney that \$87(2)(6) bit him on his arm. While awaiting EMS, \$87(2)(6) attempted to kick officers, moved his torso and spat blood. Nothing was done in order to prevent him from spitting. Sgt. Delaney did not see an officer force \$87(2)(6) at the ground, kick him or drop him back onto the ground.					
Wi	tness Officer: PO MICHAEL OSWALD (encl. c30-32)					
•	PO Oswald's statement was largely consistent with that of Sgt. Delaney. He did not see the moment when \$\frac{8}{37(2)(b)}\$ fell to the ground because he had gone around the RMP to get to his feet. While was on the ground kicking and spitting, PO Oswald turned him to his side to prevent officers from being kicked. Some of the kicks made contact with PO Oswald's legs. No officer dropped \$\frac{8}{37(2)(b)}\$ to the ground again, kicked him, or forced his head to the side.					
	Findings and Recommendations					
All	egations Not Pled					
•	Although \$87(2)(b) alleged that an officer threatened to arrest \$87(2)(b) for recording the incident, she relayed that part of the incident differently, testifying that an officer told her she would be arrested if she did not move off the street and onto the sidewalk. She acknowledged moving into the street toward \$87(2)(b) as he was on the ground and being arrested \$87(2)(b)					
Rec	<u>commendations</u>					
All	egation A – Force: PO Thomas Day used physical force against 887(2)(b)					
a la pro reco abra flui						
Page 5						
	CCRB Case # 201403897					

§ 87(2)(g)			
§ 87(2)(g)			
One of the Medical Trea			
the time officers arrived, and that		it eye and scratches to his nen he attempted to flee a	
s husband held him o		h.a. h.a. h.a.h.a.d h.ald	
\$ 87(2)(b) stated \$ 87(2)(b) police arrived. She also did not se		when her husband held tact with his face, or force	
pavement after he fell. PO Days 870		and fully much of 8 o7/2VA	a head against the
ground but did not recall.	d that he might have fo	orcefully pushed §87(2)(b)	s head against the
§ 87(2)(g)			
3 01 (2)(9)			
			•
Team:			
Investigator:			
Signature	Print	Date	
Supervisor:			
Title/Signature	Print	Date	
Reviewer:			
Title/Signature	Print	Date	
Reviewer:			
Title/Signature	Print	Date	

Page 6 CCRB Case # 201403897